

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gregory S. Clark) April 14, 2008
)
Serial No.: 10/666,735)
)
Filed: September 19, 2003)
) Group Art Unit: 3627
For: COLLABORATIVE SIGNAL) Examiner: Andrew J. Rudy
) Tel: (571) 272-6789
)
) Office Action Mailed: March 14, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Sir:

This paper is submitted in response to the Office Action identified above.

Claims 1-10 and 22-31 are in this application.

Claims 1-10 and 22-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Pat. No. 7,051,072 to Stewart et. al. Further, the Examiner rejected applicants' previous response as failing to meet the requirements of 37 C.F.R. § 1.111(b) (see also MPEP § 2144.03). Applicants respectfully disagree with the Examiner's interpretation of the Stewart reference as applied to the claims of the present invention, and refusal to consider applicants' arguments. For the reasons set forth below, reconsideration and allowance of claims 1-10 and 22-31 is respectfully requested.

37 C.F.R. §1.111(b) requires that

§1.111 Reply by applicant or patent owner to a non-final Office action.

(a)(1) If the Office action after the first examination (§ 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See §§ 1.135 and 1.136 for time for reply to avoid abandonment.

(b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

In response to the June 22, 2007 office action, applicants explicitly argued that “[w]hile the Examiner felt *querying* a central hub is known in the art, the central hub described in the application processes an event, modifies the event to be uniquely identifiable, delivers the event in its modified form to a set of recipients, and the hub is queried responsive to receipt of said event.” December 12, 2007 response, p. 13. The Examiner did not cite these steps in rejecting claims 1 and 22, nor address where these limitations are found in Stewart. These specific limitations were argued by applicants as not being obvious to one of ordinary skill in the art, and because they were not even mentioned in the June 22, 2007 office action, applicants were pointing out the Examiner’s errors as required by MPEP § 2144.03(C).

In response to applicants' pointing out the Examiner's errors, the Examiner failed to produce any evidence as required by MPEP § 2144.03(C). "Office notice unsupported by documentary evidence should only be taken by the examiner where facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A). The Examiner is required to produce documentary evidence unless the facts beyond the record are "capable of such instant and unquestionable demonstration as to defy dispute." *Id.*, quoting *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970).

Further, if official notice is taken, the Examiner must "provide specific factual finding predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge." MPEP § 2144.03(B). "The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice so as to adequately traverse the rejection in the next reply after the Office action in which the common knowledge statement was made." *Id.* Because the Examiner did not cite specific facts or the explicit basis for the rejection, applicants could not respond beyond pointing out the Examiner's errors, as was done in the December 12, 2007 response.

For these reasons, applicants respectfully requests that the Examiner's rejections be withdrawn and this application be passed to allowance. Alternatively, applicants request that the final office action be withdrawn, and the Examiner provide specific factual findings predicated upon sound technical and scientific reasoning to support his conclusion of common knowledge to which applicants are given an opportunity to respond.

Respectfully submitted,

Dated: April 15, 2008

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